



**US Army Corps
of Engineers**

Omaha District

PUBLIC NOTICE

Application No: 2002-90-514
Applicant: Valley County
Waterway: Willow Creek
Issue Date: January 12, 2004
Expiration Date: February 12, 2004

30 DAY NOTICE

Helena Regulatory Office 10 West 15th Street, Suite 2200 Helena, Montana 59626

**JOINT PUBLIC NOTICE
FOR AFTER-THE-FACT PERMIT APPLICATION SUBMITTED TO
U.S. ARMY CORPS OF ENGINEERS
AND
MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY**

The U.S. Army Corps of Engineers (Corps) has received an after-the-fact application by Valley County pertaining to the alteration and channelization of Willow Creek by the County Road Department. The work, conducted in 2002, was done to eliminate stream bank erosion that was a safety hazard and threatening the integrity of the county road. **The Corps will evaluate the unauthorized work to determine if it is permissible under current laws and regulations. At this time, the Corps is soliciting public comments for consideration in its decision making process. The purpose of this notice is to receive comments to assist the Corps in evaluating whether the project should be permitted as constructed, be permitted with modifications, or not be permitted, requiring restoration of the original channel.**

Background:

The project is located in Valley County in northeastern Montana approximately 12 miles north of Hinsdale, Montana in NE 1/4 Section 1, Township 32 North, Range 36 East, P.M.M. Willow Creek is a small intermittent stream draining 283 square miles and capable of peak discharges above 10,000 cubic feet per second. In 1993, severe bank erosion on Willow Creek began undercutting the county road causing a structural, as well as a safety problem for the county road. The county applied to the Corps for a Section 404 permit to relocate the stream to protect the roadway from further erosion. A three-year permit was issued in 1993 authorizing the County to excavate a 270-foot long channel to replace a meander section of Willow Creek threatening the county road. The county decided not to do the work authorized in the Section 404 1993 permit and the permit expired in 1996.

In early 2002, Valley County and Montana Fish Wildlife and Parks hired a Water Resource Engineer to analyze and design a channel relocation for Willow Creek to protect the county road. An analysis and relocation design for Willow Creek was completed and a corresponding report was prepared on March 13, 2002, by Inter-Fluve, Inc. from Bozeman, Montana. Channel relocation work was completed in the Spring of 2002 without prior notification or authorization from the Corps.

Required Authorizations for Channel Alteration

Clean Water Act: The Corps of Engineers is responsible for administering Section 404 of the Clean Water Act (33 USC 1344), which prohibits the discharge of dredged or fill materials into streams, lakes, and wetlands without Corps authorization.

Placement of fill in Willow Creek and/or adjacent wetlands falls under the jurisdiction of Section 404 of the Clean Water Act. Under Corps regulations, filling 850 feet of the channel requires authorization through an Individual Permit with Public Notice and comments, and an analysis of impacts and alternatives before a decision can be made to issue the permit.

Approximately 850 linear feet of an existing channel meander on Willow Creek was filled, approximately 1.7 acres of floodplain was eliminated and 450 linear feet of new channel was created without authorization from the Corps of Engineers as required under Section 404 of the Clean Water Act.

On March 21, 2003, the Corps sent Valley County Commissioners a Notice of Violation letter, reiterating the requirements of the Clean Water Act, the expiration of past permits and requesting information surrounding the unauthorized activities. The County has been responsive, has supplied the requested information, and would like to have the activity authorized through an after-the-fact permit.

Montana Stream Protection Act: The Montana Department of Fish, Wildlife and Parks (FWP) administers the Montana Stream Protection Act which requires a 124 Permit for any project by a governmental agency where the construction activities affect the natural existing shape and form of any stream or its banks or tributaries. The County submitted an application for a 124 Permit that was approved by FWP to alter Willow Creek as defined in the Inter-Fluve Analysis Report.

Description of Completed Channel Alteration: In 2002, the County excavated a 10-foot deep channel, approximately 500 feet long to replace an existing 850-foot long channel meander to Willow Creek that was threatening the integrity and safety of the county road. The 850-foot meander was filled and a 13.5-foot dike constructed on the left bank (looking downstream). The inside of the meander, which served as a natural floodplain bench, was filled and isolated from the newly constructed stream channel. An as-built site map and cross sections are shown in Figures 1-2.

401 Water Quality Certification: The Montana Department of Environmental Quality, 1520 East 6th Avenue, PO Box 200901, Helena, Montana 59620-0901, will review the completed work with the intent to certify in accordance with the provisions of Section 401 of the Clean Water Act. The certification, if issued, will express the State's opinion that the operations undertaken by the applicant did not result in a violation of applicable water quality standards. The Montana Department of Environmental Quality hereby incorporates this public notice as its own public notice and procedures by reference thereto.

Cultural Resources: The Corps of Engineers, Omaha District will comply with the National Historic Preservation Act of 1966, as amended. We have checked the National Register of Historic Places and its current supplements, and there are no known National Register sites in the vicinity; however, we will evaluate input by the State Historic Preservation Office and the public in response to this public notice, and we may conduct or require a reconnaissance survey of the permit area to check for unknown historic or prehistoric properties, if warranted.

Threatened / Endangered Species: In compliance with the Endangered Species Act, a preliminary determination has been made that the described work will not affect species designated as threatened or endangered, or adversely affect critical habitat. In order to complete our evaluation of this activity, comments are solicited from the U.S. Fish and Wildlife Service and other interested agencies and individuals.

Evaluation Factors: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposed activity must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. In addition, the evaluation of the impact of work on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under authority of Section 404(b) of the Clean Water Act (40 C.F.R.; Part 230).

Comments: The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this constructed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for the channel relocation. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental

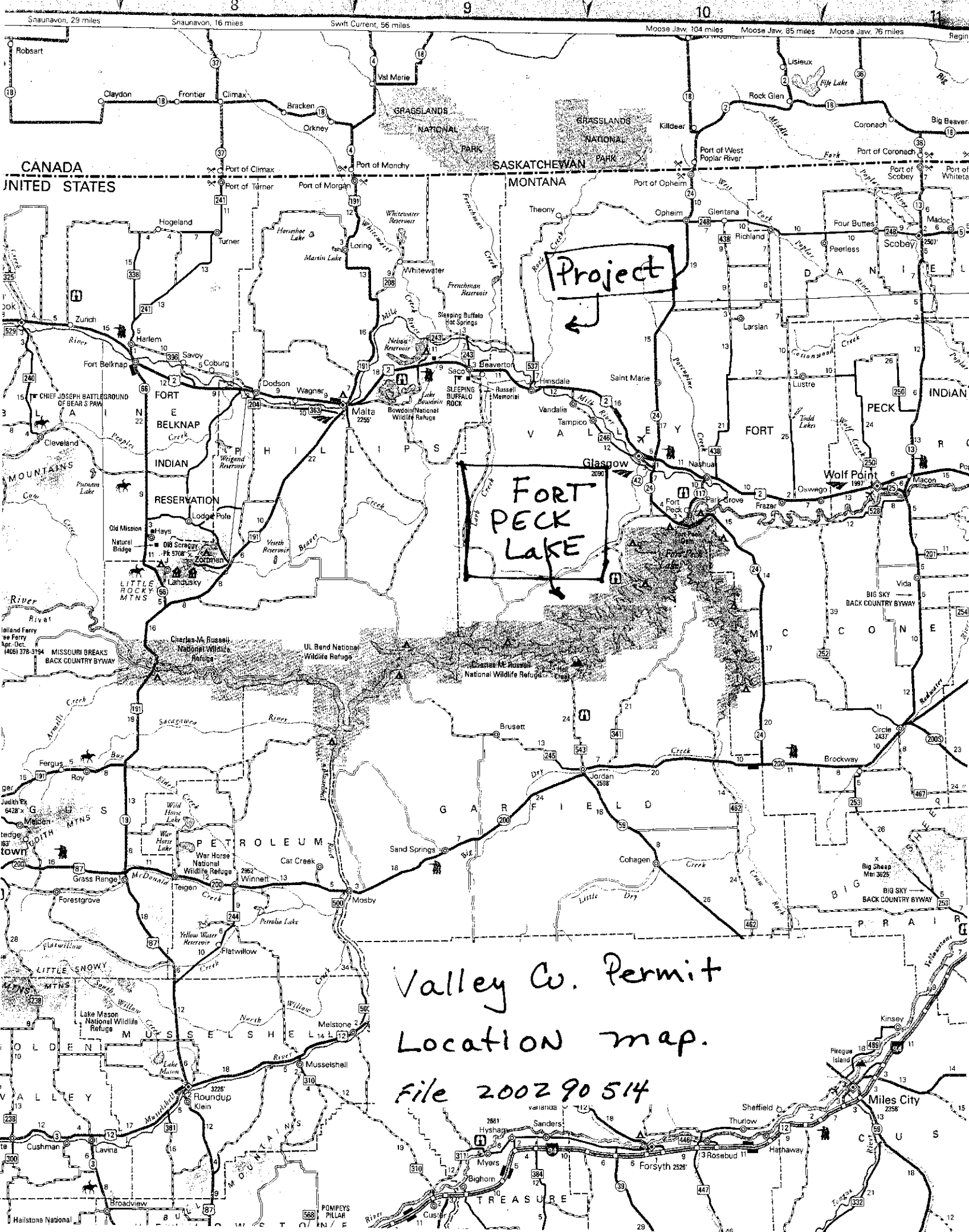
Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. All public notice comments will be considered public information and will be subject to review by the applicant.

Any person may request, in writing and within the comment period specified in this notice, that a public hearing be held for the purpose of gathering additional information. Requests for public hearings must be identified as such and shall state specifically the reasons for holding a public hearing and what additional information would be obtained. The request must be submitted to the U.S. Army Corps of Engineers, 10 West 15th Street, Helena, Montana 59626. If it is decided that additional information is required and that a public hearing should be held, interested parties will be notified of the date, time and location.

Any interested party (particularly officials of any town, city, county, state, or Federal agency; Indian tribe; or local association whose interests may be affected by the work) is invited to submit to this office written facts, arguments, or objections on or before the expiration date listed on the front of this notice. Any agency or individual having an objection to the work should specifically identify it as an objection with clear and specific reasons. Comments, both favorable and unfavorable, will be accepted, made a part of the record and will receive full consideration in subsequent actions on this application. All replies to the public notice should be addressed to the **U.S. Army Corps of Engineers, 10 West 15th Street, Helena, Montana 59626. Please reference the Application Number found on the first page of this notice in any correspondence.** Peter Schendel, Project Manager, telephone number (406) 441-1364, may be contacted for additional information. You may also fax your comments to (406) 441-1380 or email to Peter.L.Schendel@usace.army.mil.

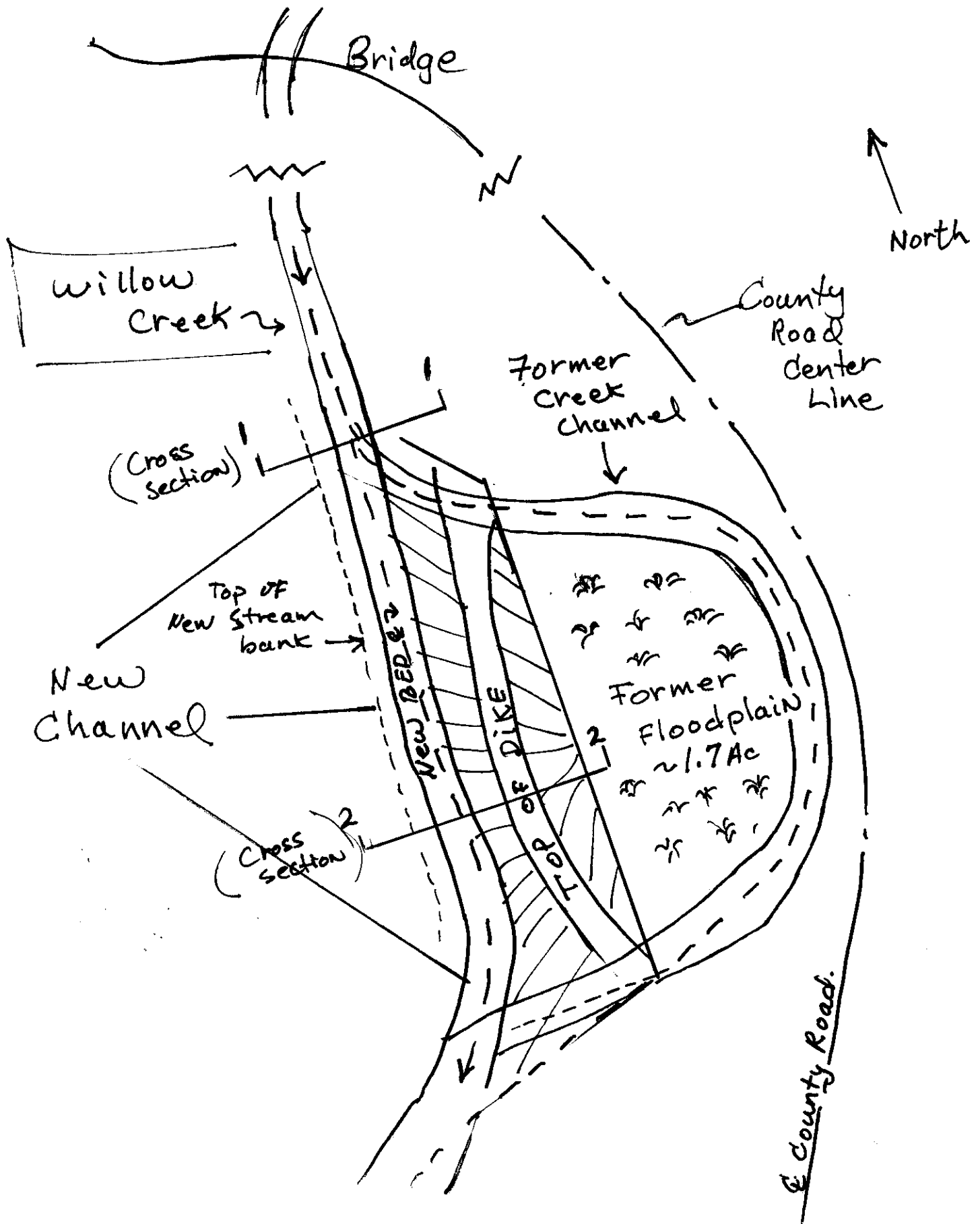
Comments postmarked after the expiration date of this public notice will not be considered.

Statutory Authorities: A permit, if issued, will be under the provisions of Section 404 of the Clean Water Act.



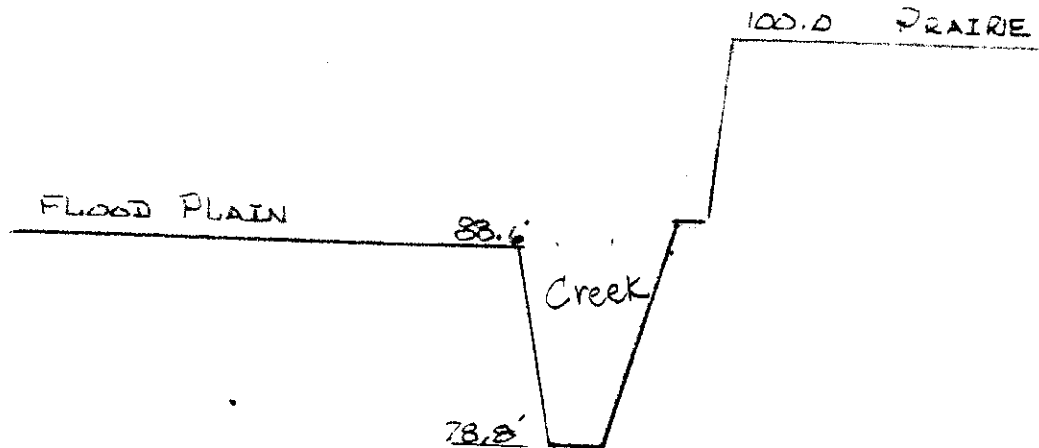
Willow Creek Relocation Site Plan

Figure 1



willow Creek Relocation Cross-Sections

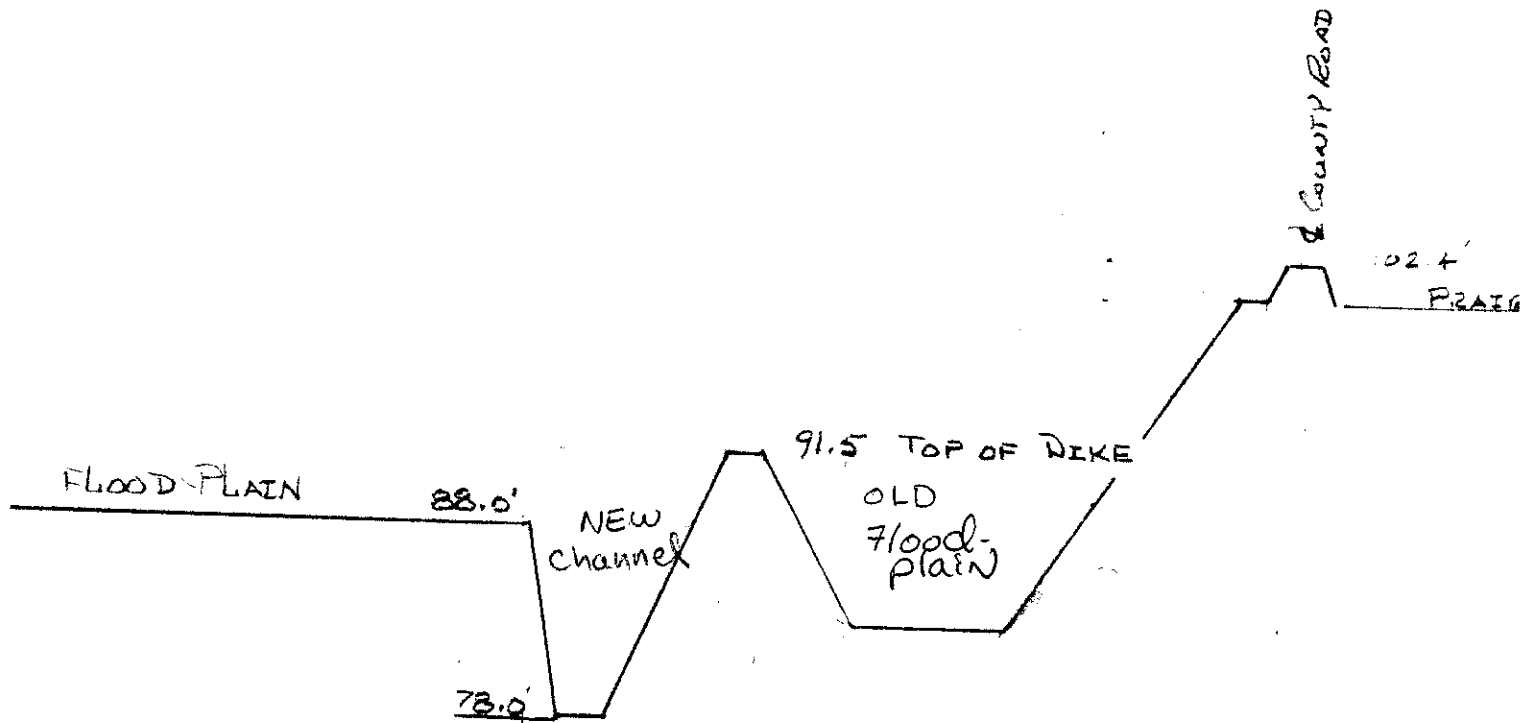
Figure 2



SECTION 1-1

HORIZ: 1" = 100'

VERT: 1" = 10'



SECTION 2-2

HORIZ: 1" = 100'

VERT: 1" = 10'